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| APPLICATION NO.  | FILING DATE   | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.  | CONFIRMATION NO. |          |  |                   |  |          |              |      |  |           |               |            |       |
|--|---------------|----------------------|--|------------------|----------|--|-------------------|--|----------|--------------|------|--|-----------|---------------|------------|-------|
| 09/621,830   | 07/24/2000    | Louis Brown Abrams   | D.N.7167   | 6580             |          |  |                   |  |          |              |      |  |           |               |            |       |
| 7590<br>Sheridan Ross PC<br>1560 Broadway<br>Suite 1200<br>Denver, CO 80202-5141 |               | 05/16/2007           | <table border="1"><tr><td colspan="2">EXAMINER</td></tr><tr><td colspan="2">JUSKA, CHERYL ANN</td></tr><tr><td>ART UNIT</td><td>PAPER NUMBER</td></tr><tr><td>1771</td><td></td></tr><tr><td>MAIL DATE</td><td>DELIVERY MODE</td></tr><tr><td>05/16/2007</td><td>PAPER</td></tr></table> |                  | EXAMINER |  | JUSKA, CHERYL ANN |  | ART UNIT | PAPER NUMBER | 1771 |  | MAIL DATE | DELIVERY MODE | 05/16/2007 | PAPER |
| EXAMINER   |               |                      |  |                  |          |  |                   |  |          |              |      |  |           |               |            |       |
| JUSKA, CHERYL ANN  |               |                      |  |                  |          |  |                   |  |          |              |      |  |           |               |            |       |
| ART UNIT   | PAPER NUMBER  |                      |  |                  |          |  |                   |  |          |              |      |  |           |               |            |       |
| 1771   |               |                      |  |                  |          |  |                   |  |          |              |      |  |           |               |            |       |
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                                      |  |  |
|------------------------------|--------------------------------------|--|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>09/621,830 | <b>Applicant(s)</b><br>ABRAMS, LOUIS BROWN |  |
|                              | <b>Examiner</b><br>Cheryl Juska      | <b>Art Unit</b><br>1771                    |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 February 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-4, 18-23, 25-27, 29-38, 41, 44-46, 48 and 50-63 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-4, 51, 55, 60 and 62 is/are allowed.
- 6) ☒ Claim(s) 18-23, 25-27, 29-38, 41, 44-46, 48, 50, 52-54, 56-59, 61 and 63 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |  |
|--|--|
| <p>1) <input type="checkbox"/> Notice of References Cited (PTO-892)</p> <p>2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)</p> <p>3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br/>Paper No(s)/Mail Date <u>02/07, 03/07</u>.</p> | <p>4) <input type="checkbox"/> Interview Summary (PTO-413)<br/>Paper No(s)/Mail Date. _____</p> <p>5) <input type="checkbox"/> Notice of Informal Patent Application</p> <p>6) <input type="checkbox"/> Other: _____</p> |
|--|--|

## **DETAILED ACTION**

### ***Response to Amendment***

1. Applicant's amendment filed February 15, 2007, has been entered. The specification and claims 62 and 63 are amended as requested. Claims 5-17, 24, 28, 39, 40, 42, 43, 47, and 49 are cancelled. Thus, the pending claims are 1-4, 18-23, 25-27, 29-38, 41, 44-46, 48, and 50-63.
2. Said amendment is sufficient to withdraw the objection to the specification as set forth in section 3 of the last Office Action (11/15/06). Additionally, said amendment renders moot the 112, 1<sup>st</sup> rejection of claims 40 and 42 as set forth in section 6 of the last Office Action. Furthermore, said amendment is sufficient to withdraw the 112, 1<sup>st</sup> rejection of claims 62 and 63 as set forth in section 7 of the last Office Action.
3. Despite these advances, the application is not in condition for allowance for the reasons set forth below.

### ***Claim Objections***

4. Claims 29 and 31 are objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claims, or amend the claims to place the claims in proper dependent form, or rewrite the claims in independent form. Claims 29 and 31 depend from cancelled claim 28.

### ***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

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The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 18-23, 25-27, 29-38, 41, 44-46, 48, 50, 52-54, 56-59, 61, and 63 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. Claim 18 is indefinite for the use of the phrase “wherein at least most of the free surface of the flock is in direct physical contact with the thermosetting sheet.” It is unclear how the ends of the flock that contact the thermosetting film can be considered the “*free* surface of the flock.” The phrase “free ends of the flock” is only relevant when describing the a flock that has one of its fiber ends not in contact with an adhesive or substrate. It is suggested that applicant amend the claims to describe the flock ends as “first surface of the flock” and “opposing second surface of the flock” or something similar. Claim 26, 31, 33, 35, 45, and 57-59 are similarly rejected. Claims 19-23, 25, 27, 29, 30, 32, 34, 36-38, 41, 44, 46, 48, 50, 52-54, 56, 61, and 63 are also rejected for their dependency upon claims 18 and 26.

### ***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 18-22, 25, 48, 52, 58, and 63 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 5,338,603 issued to Mahn, Sr. et al. in view of US 4,810,549 issued to Abrams et al.

Mahn discloses an ornamental heat transfer comprising an upper decorative layer and a lower thermoset layer of uncured linear saturated polyester film (abstract). The decorative upper layer may be a flock layer, wherein an intermediate adhesive layer of PVC (i.e., free of acrylic or hot melt adhesive) is employed to adhere said flock to said thermoset film (abstract and col. 4, lines 43-50). The heat transfer may be laminated to nylon substrates by applying heat and pressure to melt the polyester and activate the curing agent (i.e., crosslinking agent) of said polyester (col. 4, line 66-col. 17). In other words, the transfer that is not adhered to a substrate comprises a thermoset that is not fully activated or crosslinked.

Mahn fails to teach the use of a flock transfer to apply patterned flock fibers onto the thermosetting layer. However, the use of said transfers having release sheets and a release agent are well known in the art for applying flock to piece work or oddly shaped articles and to apply flock in a decorative pattern. For example, note Abrams, abstract and col. 2, lines 34-43. Thus, it would have been obvious to one of ordinary skill in the art to apply said flock by means of a transfer rather than by direct flocking in order to produce a decorative pattern or shape.

Therefore, claims 18, 19, 22, 25, 48, 58, and 63 are rejected over the cited prior art.

While the cited prior art fails to teach a polyester or polyurethane thermosetting adhesive, it would have been obvious to one of ordinary skill in the art to substitute a polyester or polyurethane thermosetting resin for the thermosetting resin of Landler since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416. Therefore, claims 20 and 52 are also rejected.

Regarding claim 21, which limits the thermosetting film to being “pre-cut to correspond to a shape of the transfer,” the claim is also obvious over the cited prior art. Said limitation reflects the method of making the flock transfer assembly. As such, said limitation is not necessarily given patentable weight at this time since the claims are examined on the structure of the final product claimed. It is believed that the final product of the prior art has the same structural features of the present invention. Therefore, claim 21 is also rejected.

***Allowable Subject Matter***

10. Claims 1-4, 51, 55, 60, and 62 are allowed. Claims 23, 26, 27, 30, 32-38, 41, 44-46, 50, 53, 54, 56, 57, 59, and 61 contain allowable subject matter.

Applicant claims a flocked transfer comprising (a) a release sheet, (b) a release agent, (c) flock in a desired pattern, (d) a solid, self-supporting thermosetting sheet, and optionally, (e) a substrate, wherein said flock is in contact with the thermosetting sheet and wherein there is no binder adhesive between said thermosetting sheet and the flock.

In addition to the discussion of prior art with respect to the allowable subject matter set forth in sections 9 and 10 of the Office Action mailed 06/29/06, the claims are allowable over US 4,418,106 issued to Landler et al., US 4,810,549 issued to Abrams et al., and US 5,338,603 issued to Mahn, Sr. et al.

Landler discloses a method of making a flocked assembly and said assembly made therefrom. Specifically, Landler discloses a thermosetting plastic foam or film layer having a layer of flock thereon by applying said flock while the thermosetting layer is non-crosslinked and then partially crosslinking to bond said flock thereon (abstract). The invention may or may not

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be adhered to a substrate or backing by means of adhesive (col. 2, lines 47-53). The thermosetting foam or film layer has a uniform thickness and flat surfaces (Figures). Landler fails to teach the use of a *flock transfer* (i.e., release sheet and release agent) and the desire to apply *patterned flock fibers* onto the thermosetting layer. Also, Landler fails to also teach or suggest a *self-supporting* thermosetting sheet. Note Landler requires a carrier web for the thermosetting sheet.

Additionally, patterned flock transfers are well known in the art for applying flock to piece work or oddly shaped articles and to apply flock in a decorative pattern. For example, note Abrams, abstract and col. 2, lines 34-43. However, Abrams fails to teach a thermosetting sheet wherein there is no binder adhesive between the thermosetting sheet and the flock.

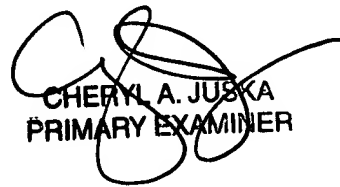
Furthermore, said claims are distinct over US 5,338,603 issued to Mahn, Sr. et al. Contrary to applicant's claimed invention, Mahn teaches a binder adhesive is present between the thermosetting sheet and the flock. Thus, claims 1-4, 23, 26, 27, 30, 32-38, 41, 44-46, 50, 51, 53-57, and 59-62 are patentably distinct over the Landler, Abrams, and Mahn references.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



CHERYL A. JUSKA  
PRIMARY EXAMINER

cj  
May 12, 2007